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IN THE UNITED STATES DISTRICT  
FOR THE DISTRICT OF ARIZONA

JAYNE SALT,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

**COMPLAINT UNDER THE FEDERAL  
TORT CLAIMS ACT FOR INJURY DUE  
TO MEDICAL NEGLIGENCE**

Plaintiff, Jayne Salt, avers for her complaint the following:

1. Jayne Salt resides in Shonto, Arizona, within the Navajo Indian Reservation, and in Winslow, Arizona.

2. This civil action seeks compensatory damages arising from the negligence of employees/personnel at Tuba City Regional Health Care Corporation ("TCRHCC") located in Tuba City, Arizona, a facility operated by a tribal contractor through the U.S. Department of Health and Human Services and the Indian Health Service, with funding provided through Public Law 93-638, the Indian Self-Determination and Education Assistance Act.

**JURISDICTION AND VENUE UNDER THE FEDERAL TORT CLAIMS ACT**

3. This action is authorized by and is brought pursuant to the provisions of the Federal Tort claims Act (FTCA), 28 U.S.C. §1346(b) and 28 U.S.C. §2671, *et seq.*, and also pursuant to 28 U.S.C. §1331.

1           4. Federal statutes, including the FTCA, vest this court with exclusive jurisdiction  
2 over plaintiff's claims in this case.

3           5. The FTCA makes the United States liable for the negligent acts and omissions of  
4 federal "employees."

5           6. Federal employees include, but are not limited to, employees of the Indian Health  
6 Service and to certain contractors and organizations such as TCRHCC and its governing board.

7           7. At all times material to this case defendant United States contracted with, funded,  
8 and controlled TCRHCC pursuant to Public Law 93-638, the Indian Self-Determination and  
9 Education Assistance Act.  
10

11           8. TCRHCC provides medical care to Native Americans who are members of  
12 recognized tribes pursuant to various federal statutes and other law.  
13

14           9. At all times material to this case defendant United States, acting through the  
15 Indian Health Service and TCRHCC, held itself out to have the ability to provide medical care to  
16 members of the Navajo Nation and plaintiff at TCRHCC, including the ability to address  
17 plaintiff's medical/health problems as to which plaintiff sought care at TCRHCC.  
18

19           10. Plaintiff, through legal counsel, presented to the U.S. Department of Health and  
20 Human Services a timely administrative claim under the FTCA alleging negligence by federal  
21 "employees" of TCRHCC in the provision of medical care to plaintiff. (Exhibit 1).

22           11. As contemplated by statute, defendant has had more than six months to  
23 investigate plaintiff's claim and to attempt settlement with plaintiff.  
24

25           12. By statute, a claim presented under the FTCA is deemed denied by the United  
26 States six months after it is presented, and plaintiff is then authorized to file a lawsuit against the  
27 United States.  
28



1 medial column fusion, using a tricortical iliac bone graft, and a Smith & Nephew medial column  
2 fusion plate, which was fixed with screws. After surgery, plaintiff's right foot was placed in a  
3 controlled ankle motion ("CAM") boot.

4 23. Plaintiff was discharged from TCRHCC on July 11, 2016. Dr. Goss gave her a  
5 "good" prognosis.

6 24. Sometime after the surgery, as early as November, 2016, the screws that Dr. Goss  
7 placed during the first surgery broke, despite plaintiff being wheelchair bound.

8 25. Dr. Goss performed another surgery on plaintiff on February 14, 2017, for "right  
9 foot hardware removal and reconstruction with external fixation." Dr. Goss diagnosed "failed  
10 hardware" as the cause of the problem.

11 26. On March 26, 2017, plaintiff was readmitted to TCRHCC with a post-operative  
12 infection in her right foot. Plaintiff reported extreme pain, nausea, and vomiting as a result of the  
13 infection. Plaintiff underwent a course of antibiotic treatment and was hospitalized until April 3,  
14 2017.

15 27. On April 12, 2017, plaintiff was readmitted to TCRHCC and Dr. Goss performed  
16 yet another surgery for replacement of "failed external fixator wires." Dr. Goss removed broken  
17 pins and implanted two external fixator pins into plaintiff's foot.

18 28. On May 2, 2017, plaintiff was again readmitted to TCRHCC because of "broken  
19 transfixation wires." Dr. Goss performed another surgery to remove a "proximal ring of external  
20 fixator with accompanying wires." However, the pins broke yet again.

21 29. On June 21, 2017, Dr. Goss performed another surgery, this time for  
22 "intramedullary beaming of the medial column" of plaintiff's right foot, after plaintiff had to go  
23 to the emergency room because of "a wire protruding from her first metatarsal phalangeal joint."  
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1           30.     Following further complications and more problems with the surgical hardware in  
2 plaintiff's foot, Dr. Goss performed his final surgery on plaintiff in August 2017.

3           31.     Plaintiff has suffered excruciating pain and has not been able to walk since Dr.  
4 Goss first operated on her foot in July 2016.

5           32.     Plaintiff transferred her care to Winslow Indian Hospital, where she was treated  
6 by podiatrist Dr. Isaac Palacios. Dr. Palacios was not able to treat plaintiff conservatively; he  
7 referred her to Northern Arizona Orthopedics for a right, below the knee amputation due to  
8 osteomyelitis.

9           33.     Plaintiff's right foot was amputated on February 22, 2018. The amputation was a  
10 last-ditch effort to alleviate plaintiff's symptoms and to control the severe pain she was  
11 experiencing. Plaintiff had a complex pain syndrome, coupled with inflammation and infection.  
12

13           34.     After the amputation, plaintiff was admitted to Mountain Valley Rehabilitation  
14 Center in Prescott Valley, Arizona, for recovery.  
15

16                   **CAUSE OF ACTION - DUTY, NEGLIGENCE, AND CAUSATION**

17           35.     Plaintiff repeats the averments stated in the preceding paragraphs and incorporates  
18 them by reference as part of her count of negligence.  
19

20           36.     The United States is legally responsible for the negligent actions of TCRHCC's  
21 employees, while those employees are performing job duties for the employer or engaged in  
22 furtherance of the interests of the employer.

23           37.     The involved staff who participated in the medical care of plaintiff, specifically,  
24 but not limited to Dr. Goss, were employees of the Indian Health Service at all pertinent times.  
25

26           38.     Those employees were on the job performing job-related duties for TCRHCC at  
27 the time they were engaged in providing healthcare to plaintiff.  
28

1           39. If any TCRHCC staff were not actual employees of the Indian Health Service at  
2 the time of the incident(s), they may have been contract employees whose contracts with the  
3 defendant provide that the defendant is liable under the Federal Tort Claims Act for their  
4 negligence.

5           40. If any negligent TCRHCC staff was not an actual employee of the Indian Health  
6 Service at the time of the incident(s), and the preceding paragraphs 18-34 thus do not apply, they  
7 may have been contract employees for whom the defendant is vicariously liable under the  
8 Federal Tort Claims Act pursuant to the doctrines of law such as agency and *respondeat*  
9 *superior*.

10           41. Defendant had a duty to exercise reasonable care in the diagnosis and treatment of  
11 plaintiff and to possess and use the degree of skill and learning ordinarily used in the same or  
12 similar circumstances by members of their professions in the provision of healthcare.

13           42. The involved staff breached the duty of reasonable care owed to plaintiff and are  
14 guilty of the following negligent actions and omissions by failing to measure up to the applicable  
15 standards of care, skill, and practice required of members of their professions, to wit:

16           a. Failure to seek out guidance, consultation, or advice from other physicians and/or  
17 podiatrists prior to commencing an invasive procedure that more likely than not involved an  
18 infectious disease process occurring in a known diabetic;

19           b. Failure to follow policies and procedures of the facility when providing medical  
20 services to plaintiff and in performing an invasive procedure on a known diabetic;

21           c. Failure to transfer plaintiff in a timely manner to a hospital that could provide a  
22 higher level of care;

23           d. Negligently compounding plaintiff's injury with multiple operations that only  
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1 harmed plaintiff further;

2 e. Failure to consider plaintiff's health history, particularly her diabetic history;

3 f. Failure to communicate;

4 g. Failure to diagnose properly and in a timely manner, including failure to perform  
5 a differential diagnosis;

6 h. Failure to review plaintiff's medical records in a timely manner;

7 i. Negligent hiring, training, supervision, and retention of employees/personnel;

8 j. Negligent performance of pre-surgery, surgical, and post-operative surgical  
9 procedures;

10 k. Failure in the handling of follow-up care, including but not limited to failure to  
11 provide appropriate and timely follow-up care;

12 l. Failure to obtain informed consent from plaintiff;

13 l. Negligent credentialing; and,

14 m. Negligently and carelessly failing to measure up to the requisite standards of care  
15 and skill required and observed in the field of medicine and emergency medical care provided by  
16 physicians, and related fields, while performing or engaged in healthcare, and in further  
17 particulars that, at this time, are not known to plaintiff as to the specific facts, but which are  
18 believed and hereby alleged will be disclosed during discovery and in the course of the litigation.

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22 43. The negligent actions and omissions of the TCRHCC staff were actions and  
23 omissions for which the United States would be liable to plaintiff for negligence under the laws  
24 of the State of Arizona, the place where the incident occurred, if the United States were a private  
25 individual at fault for the same negligence.

26  
27 44. At all times material hereto, plaintiff was a patient of the Indian Health Services,  
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1 an agency of the United States Department of Health & Human Services, and was in the care and  
 2 custody of TCRHCC and involved staff, dependent upon the government, the hospital, and the  
 3 hospital staff for her medical care.

4 45. Defendant United States, acting through its employees, negligently failed to  
 5 provide appropriate, reasonable, and required medical care to plaintiff, which gives rise to a  
 6 negligence cause of action against defendant, as laid out herein.  
 7

8 46. As a direct and proximate result of the negligence of defendant United States and  
 9 its employees, plaintiff has endured multiple surgeries, pain and suffering, past and future  
 10 medical costs, permanent mobility impairment, permanent disfigurement, past and future  
 11 financial losses, impairment to her activities of daily living, and such other injuries and damages  
 12 as will be proved at the trial of this matter.  
 13

#### 14 **DAMAGES**

15 47. Under the FTCA and the law of the place of the wrong, the State of Arizona,  
 16 plaintiff is entitled to compensatory damages for her losses, both special and general, non-  
 17 medical expenses incurred, and loss of value of household services. Defendant United States is  
 18 liable to plaintiff for her losses and plaintiff hereby claims a right to recover all allowable  
 19 damages recognized by Arizona, whether specifically mentioned herein or not.  
 20

#### 21 **CONCLUSION**

22 **WHEREFORE**, plaintiff prays for the court to enter judgment for plaintiff and to order  
 23 that she be compensated for all losses allowed or recognized by law, for an award of allowable  
 24 costs, and for such other relief as recognized under the laws and rules that govern this case.  
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26 Respectfully submitted,

27 /s/Scott E. Borg  
 28 Barber & Borg, LLC

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